

[2019] PBRA 57

Application for Reconsideration by Hall

Application

1. This is an application by Hall (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 14 October 2019 not to direct his release but to recommend open conditions.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.

Background

3. On the 17 June 2007 the Applicant was sentenced to imprisonment for public protection with a minimum period of 5 years and 79 days before he was eligible for parole for an offence of aggravated burglary. That minimum period expired on the 6 September 2014.

Request for Reconsideration

4. The application for reconsideration is dated the 31 October 2019. The grounds for seeking a reconsideration were substantially '(i) the Panel has not properly addressed why the Applicant does not meet the statutory test for release and therefore the decision is both procedurally unfair and irrational; (ii) the Panel's conclusion that drug use leads to an escalated risk of serious harm is irrational; (iii) the decision to make a recommendation to open conditions based on the evidence, oral and written, is irrational; (iv) the Panel refused to follow recommendations and assessments that were provided to it when making its decision.'

Current parole review

5. The Secretary of State referred the Applicant's case to the Board in November 2018 to decide whether to direct release or if that was not appropriate, to recommend a transfer to open conditions.
6. On the 9 October 2019, the panel which included a Judicial member, an Independent member and a Psychiatric member, considered the papers running to 517 pages and heard oral evidence from the Applicant who was legally represented, his Offender Supervisor, his Offender Manager and a prison Psychologist.



The Relevant Law

7. In order to be "irrational" within the meaning of Rule 28 (1) (a) the decision in question must be so outrageous as to defy logic, accepted moral standards or one at which no sensible person could have arrived. Moreover, in considering the assessment of the decision, due deference is to be given to the expertise of the Parole Board in making decisions relating to parole. It will also be borne in mind that in the case of oral hearings it is the panel members who saw, heard and assessed the evidence of witnesses before them: see **R (on the application of DSD and others) v the Parole Board [2018] EWHC 694 (Admin), CCSU v Minister for the Civil Service [1985] AC 374.**
8. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."

Discussion

9. Dealing with the grounds in the order they are set out, the Panel set out the positives in the Applicant's case and these have been relied upon extensively in the written representations. The Panel also set out those matters which concerned it. The following is not an exhaustive list but contain some of the salient matters.
 - (a) The Applicant has a moderate level of psychopathy traits which are linked to reoffending and risk management; some of these traits will be hard to change and they include pathological lying and failing to accept responsibility.
 - (b) That when released to designated accommodation, four drugs tests revealed the presence of cannabis, cocaine and methamphetamine. The Applicant disputed all the positive readings and on one occasion threatened to burn down the premises.
 - (c) Initially, the Applicant disputed the grounds for his recall and claimed that an individual hostel staff member had been hostile towards him.
 - (d) The Applicant has a very poor relationship with the Offender Supervisor. The Offender Manager described his attitude towards probation as dominated by a hostile orientation with a paranoid fear of being set up to fail.
 - (e) At one stage, the Applicant was setting down conditions in return for his compliance on licence.
10. The Panel considered that the Risk Management Plan had 'quality' but was concerned that it might not succeed in managing the risk of harm for four main reasons: first, the Applicant's active personality traits, second, his continuing hostility to probation with a significant potential for non-compliance, third, the real risk of relapse into substance abuse and acquisitive offending and therefore serious harm and lastly the difficulty the Applicant experiences at being fully compliant.



11. At the very heart of the Panel's anxiety was drugs relapse. The Decision Letter records that 'The Panel is convinced that drug misuse is relevant and has taken into account your use of drugs while on licence.'
12. In my judgement, there was ample evidence to support the Panel's finding in respect of the first ground and the material contained in the Decision Letter demonstrates the Panel had addressed properly the statutory test for release.
13. As to the second ground, the dossier contained a good deal of material linking the Applicant's drugs misuse with his offending. I cite just a few examples. The trial Judge noted that the Applicant sought to explain the aggravated burglaries committed in 1992 by saying he had been high on drugs. The Offender Manager said in the Recall Report (contained in the dossier) 'He was advised that any further Class A drug misuse could lead to recall action. Mr Hall became extremely argumentative and made threats to harm individuals should he be returned to prison and said he would make headline news. Mr Hall failed to admit use and failed to recognise links between his drug use, his previous lifestyle and increase in risk. This lack of appreciation of our growing concern is worrying.'
14. The Recall Report spoke of the Applicant's 'sense of entitlement to an unaffordable hedonistic lifestyle involving the daily use of illegal substances, which in turn are aggravated by a dissocial personality disorder.'
15. The psychiatric risk assessment at page 261, paragraph 6.39 said that substance abuse had been connected with the Applicant's general criminal behaviour and may have been present around the time of the index offence.
16. What the Panel had to say about current risk is found in paragraph 6 of the Decision Letter. It noted that the Psychiatrist concluded that the Applicant's 'risk of serious harm is not imminent in the community, noting that there was no evidence, in the community, that you intended to carry out your threats.' The report went on to detail that the most imminent risks, if released, would be of a verbal aggression to probation staff and drug misuse. The panel also highlighted that the Applicant spent only a short period of time on licence, closely monitored in Designated Accommodation. They considered that a further return to drug misuse could result in an increased imminence of harmful behaviour, given the Applicant's past history of offending and lack of insight into the link between drug misuse and harmful behaviour.
17. This is a view the Panel was entitled to reach having seen and heard the witnesses as well as reading the dossier.
18. The third ground concerns the recommendation for open conditions. The Panel was well aware that this was not the recommendation of the professional witnesses; the Applicant had been to an open prison and after a period of time failed and was returned. However, the Panel noted (in the decision letter) that while the Applicant was hoping for release, he expressed a willingness to go to open conditions in the alternative. A decision can be controversial and at the same time not be irrational. There was sufficient evidence before the Panel to make the recommendation they did.



19. The last ground is possibly misconceived. The Applicant complains that the Panel refused to follow recommendations and assessments provided to it. The Panel recorded that the Psychiatrist supported re-release; the Offender Supervisor supported it when asked in the hearing, but that the Offender Manager did not support release and remained concerned at the obstacles the Applicant placed in the way of effective risk management. The Panel cited his insistence that drug tests should be confined to urine samples and that he would not be willing to complete further psychological work nor would he accept a GPS tag. The Offender Manager considered the Applicant needed to do further work in closed conditions before his risk could be managed in the community and she had not changed that view even though recently, the Applicant said he would comply with his licence conditions.
20. I say the ground may be misconceived because, in essence, it submits that the Panel should have preferred an alternative, arguable case and come to a different decision. The reconsideration mechanism follows the practice and procedure of Judicial Review. The correct approach of the reconsideration process is not to ask whether the panel might have come to a different decision; the correct approach is confined to asking whether the Applicant has established that the panel's finding was irrational within Lord Diplock's definition. In this instance, the Applicant has failed to do that.

Decision

21. For the reasons I have given, I do not consider that the decision was irrational or procedurally unfair and accordingly the application for reconsideration is refused.

James Orrell
13 November 2019

